

Audit Policy User's Survey Results Part I

Question 1

Case Resolved	Count
Yes	39
No	11

Question 2

Domestic/International	Count
Yes	27
No	21

Question 3

U.S. Annual Sales	Count
Over \$1 billion	14
\$100 - 1 billion	12
\$5 - 50 million	11
Don't Know	3
\$501000 - \$1 million	2
Not applicable	1
\$50 - 100 million	1
\$1.1 - 5 million	1

Question 4

1997 World Sales	Count
Not applicable	18
Over \$1 billion	9
\$100 - 1 billion	5
\$5 - 50 million	4
Don't Know	3
\$501000 - \$1 million	1
\$50 - 100 million	1

Question 5

Number of Employees	Count
1001 - 5000	14
101 - 500	11
5000 - 20000	10
51 - 100	4
501 - 1000	4
1 - 20	3
Over 20000	2
21 - 50	1

Question 6

International Employees	Count
None	18
Don't know	7
1001-5000	6
Over 20000	4
501-1000	3
1-20	3
51-100	2
5000-20000	1
21-50	1

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Question 7

Type of Industry	Count
Chemicals or petrochemicals	17
Metals or mining	9
Other	5
Industrial or farm equipment	4
Electronics-computers or electrical equipment	3
Health care products (including packaging)	2
Energy production (non-utility) or petroleum refining	2
Electric or gas utilities	2
Consumer durable or nondurable goods	2
Aerospace or defense equipment	2
Food-beverages or tobacco	1
Construction or building materials	1

Other industries given

Plastics (Injection Blow Molding)

Instruments Manufacturing

Federal Government

Secondary Education

Solvent Recovery RCRA Permit

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Question 8

<u>Learn of Audit Policy</u>	<u>Count</u>
In-house or outside counsel	16
Federal Register	9
Other	6
Trade association	5
Seminar or conference	3
Trade publications	2
Trade association; In-house or outside counsel; Trade publications	1
Trade association; Federal Register; Seminar or conference; In-house or other counsel; Trade publications	1
Seminar or conference; Outside counsel; Other	1
In-house or outside counsel; Seminar or conference	1
In-house or outside counsel; Federal Register; Seminar or conference; Trade publications; Other	1
Federal Register; In-house or outside counsel; Trade publications	1
Federal Register; In-house or outside counsel	1
EPA/OECA website; Trade publications	1

Other Responses Given

Local Inter-Industry Environmental Organizations

Discussions with regulators.

Familiar with its development since 1994

EPA Region V Mini-Mill initiative

EPA's "Mini-Mill" Initiative

Was unaware of policy at time of disclosure

Contacted EPA concerning problem

Environmental Publication

Audit Policy User's Survey Results Part I

Question 9

Would Disclose w/o Policy	Count
Yes	24
Don't know	21
NO	5

Would Disclose w/o Policy	Explanation Why or Why Not
Yes	Disclosing the violations is required by regulations and/or statutes.
Yes	To correct an oversight in reporting
Yes	Violations would always be disclosed, but the EPA Audit Policy creates an incentive for comprehensive self-auditing
Yes	Would have used self disclosure policy under TSCA penalty policy.
Yes	Yes, if it was required by a statute.
Yes	Company policy is to maintain total compliance in all EPA or other agency's requirements
Yes	Its required.
Yes	Company policy
Yes	In the facility's current permitting situation, it was beneficial to disclose with or without the Audit Policy. The facility does believe the Audit Policy is necessary however.
Yes	Corporate policy to disclose.
Yes	Company was being purchased. Discovery of violation came during due diligence
Yes	Our corporate culture is to "do the right thing." We must work with our regulators, citizen groups and our neighbors to accomplish our goal.
Yes	As a result of an outside compliance review, we were apprised of the violation at which time it was disclosed
Yes	To stay in compliance with laws
Yes	We would have self-disclosed under the "old" (Circa 1987) "Recordkeeping and Reporting Rules / TSCA Sections 8, 12 and 13 / Enforcement Response Policy" Published by the Office of Compliance Monitoring, OPPTS, USEPA.
Yes	Our policy is to comply with all laws, rules, and regulations. This includes reporting noncompliance incidents.
Yes	We don't knowingly violate government regulations, disclosure was determined not to be a violation.
Yes	Per company policy
No	No protection from fines.
Don't know	Not sure 100%. The Audit Policy was a clear motivator to report
Don't know	In the absence of the policy, circumstances would have required further review and analysis of all relevant factors
Don't know	Considerations: "paper" violations; no endangerment; preventive and corrective action immediately undertaken regardless of Policy's existence
Don't know	Reporting violation only - no threat to environment. Plant has never had Federal EPCRA audit, so good chance we would not be caught if we did not report. However, we wanted to be in compliance and correct past errors. However, without the certainty of fine reduction, it may have been too expensive to self-report a violation

Audit Policy User's Survey Results Part I

Don't know	We probably would have disclosed under the voluntary disclosure policies
Don't know	Potential violation was the absence of a permit, which would have been applied for. Whether it would have been separately reported as a violation is uncertain.
Don't know	It was only a reporting violation; without the policy we may not have reported it

Audit Policy User's Survey Results Part I

Question 10

Type of Violation	Count
EPCRA	17
TSCA	13
RCRA	7
Other	1
CAA	4
TSCA: CAA	
RCRA: EPCRA; CWA; CAA	1
RCRA; CWA	1
CWA: CAA	1
CWA	1

Other Violation Given

SDWA

We had no violations.

SARA III Tier II Reporting

SDWA

Question 11

Duration of Audit	Count
Not applicable	13
1-2 days	11
3-7 days	9
6 months or longer	6
1-3 weeks	5
1-5 months	2
3-7 days; Not applicable	1
1-2 days; 1-3 weeks	1

Audit Policy User's Survey Results Part I

Question 12

Affiliation of Auditor	Count
In-house-engages in activity audited	19
In-house-independent of activity audited	13
Outside contractor	10
Other	3
In-house-Independent of activity audited; Outside contractor	1
In-house-engages in activity audited; Outside contractor: Other	1
In-house-engages in activity audited; Outside contractor	1

Other Auditor Responses Given

Wasn't any violation

Had **outside** contractor conduct **audit**, but found no violations.

New in-house environmental manager

Audit Policy User's Survey Results Part I

Question 13

Formal Audit Program	Count
Yes	35
No	14
Informal Program	1

Question 13b

Facilities 13b	Count
All facilities	22
Most facilities	7
Some facilities	4
Other	1

Other Facilities Given

Only one facility

Question 13a

Scope of Program	Count
Multi-media	78
Selected media and statutes	4

Question 13c

Duration of the Audit Under the Program	Count
3-7 days	13
1-2 days	9
1-3 weeks	4
6 months or longer	2
1-5 months	2
Continuous as part of in-house environmental program	1
1-2 days; 3-7 days: Depends on facility	1
1-2 days; 3-7 days	1

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Question 13d

Affiliation of Auditor	Count
In-house-independent of activity audited	13
Outside contractor	5
In-house-engages in activity audited	5
In-house-independent of activity audited; Outside contractor	2
In-house-engages in activity audited, Outside contractor	2
In-house-engages in activity audited; In-house-Independent of activity audited	2
Outside contractor; Other	1
Other	1
In-house-engages in activity audited; Outside contractor; In-house, independent of activity audited	1
In-house-engages in activity audited; Outstde contractor (on occasion)	1
In-house-engages in activity audited; In-house, independent of activity audited; Outside contractor	1
In-house-engages in activity audited; In-house, independent of activity audited; Other	1

Other Affiliations Given

Some audits combination of site and off site employees.

Combination of in activity and independent of activity

Outside counsel

Audit Policy User's Survey Results Part I

Question 13e

Frequency of Audit	Count
Once every three to five years	9
Once every year	8
Once every two years	8
Other	7
Once every year; Once every two years	1
Once every three to five years; Other	1

Other Frequencies Given

Monthly

Just being developed

Monthly to once every three years

Continuous

Once every six months

Once every three years by corporate function;
Once every quarter by business unit.

Some every year, others every two

Audit Policy User's Survey Results Part I

Question 13f

Improvements in Auditing Practices	Count
Did not encourage improvements in auditing program	16
Other	4
Scope of media covered	3
Scope of processes covered	2
Scope of media covered; Scope of processes covered	2
Scope of media covered; Number of people involved	2
Scope of media covered; Frequency of auditing	2
Scope of media covered; Frequency of auditing; Number of people involved	1
Scope of media covered; Frequency of auditing; Number of facilities audited	1
Number of people involved	1
Number of facilities audited	1
Frequency of auditing; Scope of processes covered	1

Other Improvements Given

Did not encourage improvements in auditing program.
Our improvements are based on our desire for compliance.

Improved audit follow-up of any findings.

Gave us discipline and focus for auditing.

Created a partnership or trust between regulator and reporting regulated entity.

Audit Policy User's Survey Results Part II

Question 14

Have Formal EMS	Count
Yes	26
No	23

Question 14a

Type of Formal System	Count
EMS that focuses on compliance and other objectives and targets or that has a compliance management system or "due diligence" system that is part of the EMS	24
EMS that does not formally address compliance	
Other	1

Other Types Given

Plan to implement over next two years. Now implementing at manufacturing facilities.

Question 14b

Improvements in EMS or Compliance Management

Take more diligence on audits and report violations in a **timely** manner.

Monitoring

Ensured inclusion of internal auditing system into EMS

Importance of annual audits was noted and focused a need for outside **environmental** engineering assistance on a regular and periodic **basis**.

Broadened scope of regulatory efforts at compliance - Increased awareness of **various** regulatory responsibilities.

Additional EPCRA reporting training conducted by SAIC. Review facility inventory and EPCRA Reporting by SAIC consultants.

A TSCA Inventory Update Rule compliance review was added to the audit.

If confirmed the desirability of rigorous **effectuation** of an EMS

Supports open reporting internally within entity

It allows for periodic "Housecleaning" of the system components without fear of recrimination

Encouraged more complete **documentation** of the EMS.

It reconfirmed the system's we had in place for several years
Encouraged "buy in" from employees.

	Count
Did not encourage improvements in management system	13

Audit Policy User's Survey Results Part II

Question 15

Form of Discovery	Count
Environmental audit	18
Compliance management ("due diligence") system	12
Both	12
Not applicable because did not systematically discover violation	6
Part of a required annual inspection for stormwater	1
Not applicable because did not systematically discover violation. There was a dispute as to whether the violation was found in the scope of an audit. EPA did not accept our position.	1

Question 16

Basis of Calculation of Discovery Date	Count
Date that the technical person verified that there was a reason to believe that a violation had occurred	15
Date that a high-level manager had reason to believe that a violation had occurred	13
Other	6
Date that attorney for the facility verified that a there was a reason to believe that a violation had occurred	6
Date that a low-level employee had reason believe that a violation had occurred	5
Don't know	2
Date that the technical person verified that there was a reason to believe that a violation had occurred; Date that attorney for the facility verified that there was a reason to believe that a violation had occurred.	1

Other Responses Given

Not applicable (NA)

Date that air testing results came back from lab

Completion of determinations in a complex matter

Date auditor discovered issue.

Date that the mformation was discovered by the first employee involved.

Date that mid-level employee had reason to believe that a violation had occurred.

Comments from Question 16

Basis of Calculation	Comment
--	EPA Legal council determined, no violation.
Date that attorney for the facility verified that a there was a reason to believe that a violation had occurred	There was an interpretation issue and we had received contradictory information from EPA.

Audit Policy User's Survey Results Part II

Proactive measures 17 Rank	Count
1	16
2	10
3	4
4	3
5	1
6	1

Penalty mitigation 17 Rank	Count
1	19
2	7
3	4
4	3
5	4
6	2

Good image 17 Rank	Count
1	5
2	7
3	6
4	2
5	2
6	1
7	1

Obtain certainty 17 Rank	Count
1	2
2	8
3	5
4	5
6	1

Obtain assurance 17 Rank	Count
--	50

Protect public 17 Rank	Count
1	3
2	3
3	4
4	2
5	3
7	1

Audit Policy User's Survey Results Part II

Incentives 17 Rank	Count
3	1
4	1
5	1
6	3
7	6

Don't know 17 Rank	Count
--	50

Question 18

Aware of Reduction of Penalties	Count
Yes	37
Did not know	10

Other 17 Rank	Count
1	2
3	1
6	1

Responses for Other Rank

Right thing to do.

To offset chances for on-site inspection as part of EPA Region V Mini-Mill Initiative

It is the right thing to do

There were no public health/environmental protection issues involved.

Audit Policy User's Survey Results Part II

Question 19

Type of Relief	Count
All penalties eliminated	22
Don't know because the case is not concluded	11
Other	6
Penalties reduced under another authority because the disclosure did not meet the Audit Policy criteria	2
All gravity-based penalties eliminated with economic benefit penalty assessment	2
Penalties reduced under another authority because the disclosure did not meet the Audit Policy criteria; Other	1
Penalties not reduced because the disclosure did not meet the criteria of any authority	1
All penalties eliminated; Other	1
All penalties eliminated; 75% of gravity-based penalties eliminated with no economic benefit penalty assessment (Reported 2 TRI reporting problems)	1
75% of gravity-based penalties eliminated with no economic benefit penalty assessment	
75% of gravity-based penalties eliminated with economic benefit penalty assessment	

Other Types of Relief

No penalties

Don't know

Monetary penalty reduced to \$18,500.00

68% of gravity-based penalties eliminated with no economic benefit penalty assessment

NA

All gravity-based penalties eliminated with no applicable economic benefit penalty assessment

Corrected internal interpretation of a regulation with no fear of state or EPA disclosure later on.

Penalties reduced under another authority because of an ultra-conservative, literal reading of the Audit Policy by EPA regional enforcement personnel.

Audit Policy User's Survey Results Part II

Question 2Q

Compliance/Environmental Improvements

Internal audit system being developed on corporate level for all facilities in division "

EPA demonstrated the benefit of maintaining compliance and auditing programs through their willingness to reduce penalty amounts on self-reported violations.

Introducing EMS and audits to company.

Systematic Finding of EPCRA deficiencies

To be more aware of potential problems

Stored waste disposed of properly

As a result of the sale of the business, covered activities were eliminated.

Motivator in general to do more frequent audits

Programs are being reexamined

The facility established a better system to monitor reporting requirements

Increased local awareness of need to practice "precise environmental compliance"

Trade products used for maintenance activities are included in the inventory process. Also, additional training and review of reporting.

Improved reporting

Improved audit program and improved EPCRA reporting

Enhanced process sampling - operator personnel protective equipment, operator training

A TSCA-UNR systematic review procedure was established for each applicable facility.

Anticipated implementation of ISO 14001/EMS by late 1999.

Enhancement of procedures and training

Ability to find, report, and correct issues in a cooperative or partnering role with EPA

Completed TRI reports that were not done previously so reporting was brought up-to-date

None, it is a useful tool in our compliance program and environmental audit program.

Greater awareness on the part of management that compliance activities must become part of business processes

We've embarked on a broad program to update and improve procedures to more plainly address compliance

None I am aware of.

<u>Other Responses</u>	<u>Count</u>
Too early to tell	11
Don't know	7

Audit Policy User's Survey Results Part II

Question 21

Increase Awareness of Audit Policy

Proactive audit for educational purposes only.

Improve education/awareness to the people in the agencies(government) working with this.

Republish policy and distribute to regulated businesses

Publish statistics in industry trade publications

Seminars in how to use

Ad campaign

Hold more workshops throughout the state.

Contact industry members being targeted by EPA!

Publicize more the "success stories" relative to audits - i.e. problems discovered and corrected and potential penalties eliminated or reduced

Broad media coverage, coinciding with communication to businesses.

More publicity on fine reductions for companies

Request that trade organizations make membership aware of benefits and drawbacks of the Audit Policy. Presentations to regulated community at seminars.

Advertise reduced penalties for this type of compliance.

Spread the word more in Tech. Bulletins, Internet, etc

Possibly include discussion in workshops related to other regulatory requirements

Publicize the Audit Policy through workshops and forums sponsored by industry groups

Could be discussed by EPA compliance investigators.

Web site, trade publications.

Hold seminars

Publish information (not company names) that disclosure did not result in penalties

Presentation seminar

Keep up the public promotions of this policy.

Communicate through rule making, delegate to the state

Awareness of EPA's Audit Policy is adequate.

Use of joint state/federal awareness sessions. Use of the Internet.

Larger businesses appear well aware of the Audit Policy. Middle and (101-500 employees) smaller sized businesses, however, may not be as aware and thus should be the focus of any additional "educational" effort by EPA.

I think it is aware of the policy.

Speak at professional seminars and get articles in professional publications

Seems adequate

I see in the Federal Register that EPA is creating four new compliance assistance centers to mainly serve small business and local government-s. I think big companies like ours are aware, but these centers should be used to publicize to small business.

Continue to use and publicize positive results.

Include a brochure with examples of desired behavior and documentation required with routine agency mailings.

Audit Policy User's Survey Results Part II

Perhaps regular public presentations. e.g., living with TSCA.

Periodically post a notice about it in the Federal Register and highlight on EPA's Homepage.

Publicize it on a regular basis.

Audit Policy User's Survey Results Part II

Question 22

Promote Use of Audit Policy

More education to the concerned agencies within the government and provide some incentives jointly with government (tax deductions?)

Don't know

Be more willing to reduce penalties even beyond 75% to zero in cases where people are really trying to do the right thing (even if they don't have a formal audit program).

Seminars in how to use.

Better define trigger of "knowledge of violations"

Hold more workshops throughout the state

Contact organizations with plain English information that can be disseminated to small business.

Publicize the successes.

Broad media coverage, coinciding with communication to businesses

I would include audits done under ISO (one standard • not just 14000 series) or other management systems as prima facie "Audits" for purposes of policy. I would also include due diligence. Might want to consider more flexibility in terms of use of penalty for environmental or compliance improvements.

Abate penalties upon voluntary disclosure; extend 10 day period to 15 business days.

Advertise reduced penalties for this type of compliance.

Spread the word more in Tech. Bulletins, Internet, etc.

Public training

Inform companies of possibility when publicizing new rules/regulations. Inform companies through industry associations of availability of program.

Discuss during routine inspection visits; encourage audit programs to manage compliance.

Publish case studies of successful application of policy. No penalties and improved compliance record

Clear compliance

Make it "predictable." Offer "immunity" and provide "privilege."

Take the ambiguity out of the language

Provide closure (without penalties) for violations disclosed when violations did not result in environmental harm or safety/health hazards to the public.

Through education of the policy and clear definition of the penalty reductions.

Shift more to compliance assistance instead of enforcement, especially under self-disclosure

Improve policy.

Trade association presentations, Internet, public forum presentations

Promote non punitive damages.

Institute an official audit policy that forgives all violations discovered via environmental audits

Encouragement for regulated companies to pursue EMS.

Communicate not only the penalty-mitigation/elimination results, but also the enhanced compliance and environmental performance results of the Policy's effectuation.

Audit Policy User's Survey Results Part II

Consistently responding in the same manner it did when we reported. Verify the report is covered by the Policy. Then, move forward together with reporting entity.

Speak at professional seminars and get articles in professional publications.

Provide privilege protection to the audit reports

Increase use will go hand-in-hand with increased awareness.

Publicize positive results, more awareness and communication

Make it easier to use and don't nit-pick the submitted information.

Presently there are too many requirements to meet to take advantage of the audit policy. The regulated community also needs some protection from third party suits which may result from audits • Including state enforcement.

Plainly demonstrate the positives for a company, e.g. penalty mitigation. Perhaps ask a company which has benefited to publicly state the benefit to them.

Periodically post a notice about it in the Federal Register and highlight on EPA's Homepage.

Be more real world in its applications

Audit Policy User's Survey Results Part II

Question 23

Use Policy Again	Count
Yes-if applicable	44
It depends, on	4
Don't know	2

Pending Responses

If it applied to our facility

If discovery resulted in a need to use

How this current case ends.

The severity of the violation and possible penalties

Audit Policy User's Survey Results Part II

Question 24

Recommend	Count
Yes	42
Don't know	8

Explanations

Answer	Explanation
Yes	It can be beneficial to use in some circumstances
Yes	Because of our positive experience with the Policy and its procedures
Yes	To maintain compliance
Yes	Companies can avoid penalties for doing the right thing. And everyone wins
Yes	On a case by case basis of the discovery
Yes	Already have
Yes	It enhances compliance, environmental performance, and de-polarization of regulators and the regulated community.
Yes	Provides opportunity for facilities to freely identify compliance deficiencies without risk of penalties
Yes	It can substantially reduce/eliminate civil penalties.
Yes	Advertise reduced penalties for this type of compliance
Yes	To improve the environmental situation
Yes	It creates a win-win solution
Yes	To ensure protection of human health and environment and to promote proactive measures in our industry.
Yes	Encourages companies to pursue compliance, which seems to me to be more important than simply penalizing them.
Don't know	It depends on how this current case ends
Don't know	There are some advantages, but also many disadvantages
Don't know	<p>[Note that the survey was filled out by a consultant for an industrial client]. I have used the Audit Policy for two industrial clients with EPCRA violations. The advantage is that the companies were able to correct discovered violations in a way that was "non-threatening" -they could disclose information without facing severe penalties for honest mistakes. In the first case, the procedure was short and simple. In another case (different EPA Region), the process took months, much additional information was requested. (Not all at once, a little here, a document later, very time consuming). When this process was completed, the resulting package sent to the client was very thick and "legal", rather than a short letter and maybe attachment or two to say the matter was resolved, as in the first case. I would suggest that EPA develop consistency between regions and make the process as simple and uncomplicated as possible. Even though the industries were in violation, in neither case had they been "bad players" environmentally, they just hadn't reponed correctly. While use of the Audit Policy protected them from penalties, it still proved cumbersome to us merely to correct a reporting violation, especially in the second case.</p> <p>I would be willing to advise clients in Region VI to use the Audit Policy because the first case was not complicated and very straight-forward in resolution.</p> <p>I would be less inclined to push for use of the Audit Policy in Region IV, where the process appears to be more complicated.</p>
Don't know	Depends on situation

Audit Policy User's Survey Results Part III

Question 25

Suggestions for Changes to the Terms of the Audit Policy

Be more willing to reduce penalties even beyond 75% to zero in cases where people are really trying to do the right thing (even if they don't have a formal audit program). As long as an entity a) self-discovers, b) self-reports, and c) takes care of the problem, where there is no actual environmental impact (e.g. paperwork violation) the penalty should be waived 100%.

10 days is too short!

Longer time period to determine course of action.

The notification period is a bit **brief** for a large corporate organization

I would include audits done under ISO (one standard - not just 14000 series) or other management systems as prime facie "Audits" for purposes of policy. I would also include due diligence.

Increase amount of time in which to self-report. Eliminate penalties when violation is disclosed and remedial/corrective action taken.

No, experience was favorable.

None at this time.

Eliminate or extend 10 day disclosure period. At least 30 days would be more meaningful.

Not at this time

Make compliance points more clear

Make it "predictable." Offer "immunity" and provide "privilege."

The ten day window is very brief given the complexity of the issues and regulations. Determining at which point the clock starts is difficult.

Provide longer time to notify agency. 10 days is too short to survey multiple locations when no immediate threat to human health or the environment is evident.

US EPA must have specific protections for FOIA requests on submitted audit materials until **cases** are settled. US EPA must guarantee no criminal prosecution for companies voluntarily **submitting** violations.

Institute an **official** audit policy that forgives all violations discovered via environmental audits.

Eliminate punitive aspect and become more of a partner and resource to prevent pollution.

Large entities are slightly penalized with regard to Section D (7) and use of the term "(or closely related violations)".

The 10 day disclosure requirement taken at its most conservative is impossible for a large company to meet. To interpret this requirement more liberally puts the regulated community at risk of an incorrect interpretation. The audit findings/reports should be privileged and unavailable for discovery by the EPA.

Broaden the "No-Repeat-Violations" requirement. This would enable companies to broaden the audit scope at a later time, or re-audit without disincentives.

Adopt as regulation rather than policy.

Audit Policy User's Survey Results Part III

Yes. The Audit Policy states that its "criteria for due diligence" are "adapted from existing codes of practice such as the 1991 Criminal Sentencing Guidelines." 60 Fed. Reg. 66,706, 66,708 (December 22, 1995). In fact, the Audit Policy misapplies the model provided by the Sentencing Guidelines, and so creates a higher threshold for mitigation of civil penalties than would apply for criminal offenses.

The Criminal Sentencing Guidelines provide two distinct criteria for mitigation of penalties for a corporate or other organizational defendant. First, the organization is entitled to reduction in penalties if it maintains an "effective program to prevent and detect violations of law." U.S.S.G. Section 8C2.5(f). Critically, the Guidelines provide that a company need not actually self-detect and self-report a violation to obtain full credit for such a program. "Failure to prevent to detect the instant offense, by itself, does not mean that the program was not effective." U.S.S.G. Section 8A1.2.

A separate criteria for mitigation of penalties under the Guidelines is "Self-Reporting, Cooperation, and Acceptance of Responsibility." U.S.S.G. Section 8C2.5(g). A company that actually self-reports, cooperates with law enforcement authorities, and accepts responsibility for its actions is entitled to this mitigation - quite apart from whether the company had a formal compliance program in place. *Id.*

The Sentencing Guidelines apply, of course, only to criminal conduct following a conviction in court. By contrast, EPA's Audit Policy applies to civil matters, many of which are minor in nature, and which are typically resolved outside of the judicial process. Yet, the Audit Policy applies the mitigation factors in a way that is more stringent than the Guidelines. Under the Audit Policy, it is not enough for a company to show that it has an effective compliance program in place. The company must also be able to show that it detected the specific violation through an "objective, documented, systematic procedure" (60 Fed. Reg. at 66,711).

This requirement tends unfairly to penalize the very best companies. These are companies that have an effective program in place to ensure routine, systematic compliance. These companies also have highly motivated and talented employees, who show their abilities in large part through acts of individual initiative that lie outside any documented and systematized routine. The Sentencing Guidelines would provide full credit for a company that has an effective system in place, but that discovers a particular violation through the unusual creativity of a single individual. The Audit Policy, by contrast, appears to require that the actual act of discovery be part of an objective, documented process. Under the Policy, an employee who finds a violation through independent initiative thus ensures his company will remain potentially liable for a significant gravity-based penalty.

The Audit Policy should be changed to correct this unfairness. All acts of self-discovery and self-disclosure should be given equal weight under the policy. This revision would maximize the incentives for self-discovery, by every employee, through every means available. Moreover, this change would leave intact the main incentives for corporations to adopt routine, systematic procedures. The ability to document these systematic procedures would remain the only real defense that a company has to violations that are first detected by EPA or by a third-party.

In short, the Audit Policy claims to follow the Sentencing Guidelines regarding the need for systematic discovery, but it does not. The Audit Policy should be revised to treat all self-disclosures equally, whether they are the result of routine procedures or unusual personal initiative.

There needs to be more formal recognition of immediate efforts of good faith compliance including expressed Provisions for mitigating all penalties particularly where company acts in good faith. It should be made clear that voluntary disclosure to states that have primary jurisdiction under delegation such as RCRA and CWA will qualify for policy.

An increase in the reporting window would be helpful. In a company as big as ours, 10 days is tough to do the research

The Policy itself requires the regulated entity disclose a violation to EPA in writing within 10 days after it has discovered the violation occurred, or may have occurred. The preamble discussion, however, states that EPA may accept disclosures after 10 days if reporting is not practical "because the violation is complex and compliance cannot be determined within [10 days]," provided "the circumstances do not present a serious threat" and the regulated entity can show the additional time "was needed to determine compliance status."

The Policy and its preamble are therefore somewhat inconsistent; an entity reading only the Policy itself might erroneously believe a late report would not be eligible for penalties mitigation and therefore choose not to file it.

We recommend EPA amend the Policy by adding the preamble discussion concerning reporting after 10 days, so as to eliminate any confusion about whether a report filed with EPA more than 10 days after a violation arises is too late under the Policy for penalty mitigation.

The 10 day time frame to report needs to be lengthened.

TSCA audits typically take 6-18 months to implement. If a company is conducting an audit, do not void applicability of the policy to the company in a case where EPA conducts an inspection after the audit has commenced.

Audit Policy User's Survey Results Part III

Question 26

Suggestions for Clarifications of the Terms of the Audit Policy

Trigger

Simplify in layman's terms.

Specify classes of violation requiring reporting

Make the appropriate contact person clear. (Regional Director, Regional Counsel?)

Not at this time

Make compliance points more clear

The "IO-day" reporting limit is too short - and the start date is unclear

Take the ambiguity out

The terms by which a facility can be covered under the policy are confusing and open to wide discretion. This needs to be simplified.

Large entities are slightly penalized with regard to Section D (7) and use of the term "(or closely related violations)"

Wording could be translated into "non-government" type English that can be easily read and understood by a layman without a legal degree.

The IO day disclosure requirement taken at its most conservative is impossible for a large company to meet. To interpret this requirement more liberally puts the regulated community at risk of an incorrect interpretation. The audit findings/reports should be privileged and unavailable for discovery by the EPA. Is there disclosure to the public of participants of the program? How is disclosure given? What details are provided?

Encourage EPA to apply audit policy to Title V Air Program. EPA should be consistent in every region

Yes. The Audit Policy is reasonably clear about what "due diligence" means in the context of a formal environmental "audit." The policy is also reasonably clear about the meaning of "due diligence" in the context of training and providing incentives for "production staff." 60 Fed. Reg. at 66,708. The Audit Policy should be clarified, however, to explicitly recognize the role of full-time, on-site environmental services employees. The practical role of these employees is, in essence, to continuously monitor and help ensure environmental compliance. When these employees discover an actual or potential violation, it usually means that they were simply doing their day-to-day job. The Audit Policy should clarify that a violation is presumptively found through "due diligence" if it is identified by an employee who:

- a) is specially trained in environmental compliance, beyond the training that is provided to production line employees;
- b) actually devotes a substantial majority (80% or more) of his work time to environmental compliance matters and
- c) identifies an actual or potential environmental violation in the course of his work duties.

This clarification would encourage companies to be truly "diligent" in their compliance efforts by maintaining a full-time professional environmental staff. This clarification would give companies confidence that the work of this full-time staff will receive full "credit" in the eyes of EPA, and that they should not just rely on occasional audits by outside consultants or on the environmental knowledge of non-specialist production staff.

It should be made clear that voluntary disclosures cannot be the basis for criminal prosecution against the company or any individual participating in the disclosure.

Definition of a "repeat offender" is a little confusing

The Policy itself requires the regulated entity disclose a violation to EPA in writing within 10 days after it has discovered the violation occurred, or may have occurred. The preamble discussion, however, states that EPA may accept disclosures after 10 days if reporting is not practical "because the violation is complex and compliance cannot be determined within [10 days]," provided "the circumstances do not present a serious threat" and the regulated entity can show the additional time "was needed to determine compliance status."

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Audit Policy User's Survey Results Part III

Question 27

Suggestions for Response Procedures

No, EPA personnel were very knowledgeable and helpful with procedure explanation and compliance reinstatement procedures

Be more willing to reduce penalties even beyond 75% to zero in cases where people are really trying to do the right thing (even if they don't have a formal audit program). As long as an entity a) self-discovers, b) self-reports, and c) takes care of the problem, where there is no actual environmental impact (e.g. paperwork violation) the penalty should be waived 100%.

Expedite the process and make it more user friendly.

Response was approximately 1 year after disclosure. Could at least acknowledge receipt

None at this time

Perhaps provide response within 30 days of disclosure

EPA should be concerned of the "corrective actions" and not as much of the "findings." As long as the deficiencies are being corrected, the environment is being protected - EPA could/should relax.

No, not at this time

Focus only on the violation and avoid less relevant environmental management issues

improve timeliness of response to self audit submittals

As soon as possible after disclosure, EPA should advise the disclosing party as to the office of EPA (e.g. within HQ or a Region) that will lead EPA in its response. This will enable early initiation of cooperative dialogue and reduce the anxiety of a communications vacuum.

Encourage self-reporting

Yes, speed up the response time. Our case was quite simple and straight forward but it took a year to settle.

Respond in a more timely manner.

EPA staff should be encouraged to resolve Audit Policy disclosures informally. This means, for example, using the phone to learn the facts and resolve questions rather than sending letters that are barely distinguishable (if at all) from formal information requests.

I only found that my company would not be penalized by stumbling across the report at the EPA website. A more direct notification would have been helpful.

Audit Policy User's Survey Results Part III

Question 28

Other Comments About Experience

As noted in items 21 & 22, the EPA - both Federal and State - should conduct more workshops. The cost of private entities to conduct workshops is too costly for small businesses.

Might want to consider more flexibility in terms of use of penalty for environmental or compliance improvements

Very good experience. It allowed the facility to proactively respond to address a compliance issue quickly without delays related to traditional command-and-control enforcement.

Not at this time.

Not at this time

We have been target of enforcement initiative since 1996 for CWA issues. EPA has said policy not applicable because of this. EPA would probably not have found the problems disclosed, but now may issue penalty. Message we get is, if under any investigation, don't self-report. This is counterproductive to the policy.

Pleased with the ultimate outcome but distressed with the amount of paperwork that was required.

As soon as possible after disclosure, EPA should advise the disclosing party as to the office of EPA (e.g. within HQ or a Region) that will lead EPA in its response. This will enable early initiation of cooperative dialogue and reduce the anxiety of a communications vacuum.

I'm glad they have it - no organization is perfect

The EPA attorney who worked with us was precise in the additional information she needed and did not "fish" for more, we appreciated this. Also, we received a closure letter which is a very good practice by EPA. It allows us to close the matter internally, too.

Its definitely a step in the right direction -toward encouraging a "win-win" outcome for industry and EPA. (Theoretically, the environment should be considered the biggest winner!)

EPA deserves praise for generally applying the policy in a serious, credible manner. This policy, more than most of the agency's activities, requires a high degree of trust from the regulated community to the regulators. The agency should continue to take steps to maintain and build that trust.

[Note that the survey was tilted out by a consultant for an industrial client]. I have used the Audit Policy for two industrial clients with EPCRA violations. The advantage is that the companies were able to correct discovered violations in a way that was "non-threatening" -they could disclose information without facing severe penalties for honest mistakes. In the first case, the procedure was short and simple. In another case (different EPA Region), the process took months, much additional information was requested. (Not all at once, a little here, a document later, very time consuming). When this process was completed, the resulting package sent to the client was very thick and "legal", rather than a short letter and maybe attachment or two to say the matter was resolved. as in the first case. I would suggest that EPA develop consistency between regions and make the process as simple and uncomplicated as possible. Even though the industries were in violation, in neither case had they been "bad players" environmentally, they Just hadn't reported correctly. While use of the Audit Policy protected them from penalties, it still proved cumbersome to us merely to correct a reporting violation, especially in the second case.

i would be willing to advise clients in Region VI to use the Audit Policy because the first case was not complicated and very straight-forward in resolution.

I would be less inclined to push for use of the Audit Policy in Region IV, where the process appears to be more complicated

Overall it was a positive experience. The tone of the program still has more of a threat in it than I would like. I'd rather see a "let's work together" approach.

I think the policy was handled properly and the incentives were realized for self-reporting

In general, it is a solid program.

Audit Policy User's Survey Results Part III

Question 29

Aware of Small Business Policy	Count
N O	28
Yes	19

Question 30

Consider Using Small Bus. Policy	Count
Not applicable because have >100 employees	36
Yes	7
No	3
Don't know	1

Explanations

Answer	Explanation
Yes	To take advantage of reduced/eliminated penalties.
Yes	We will be investigating the June 3, 1996 policy
No	Not applicable to federal government.
No	Not applicable to our entity.